IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Sampat Raj. Versus Sumitra Devi & ors.

S.B. Criminal Misc. Petition No. 598/2003
against the order dated 23-6-2003 passed
by the Sessions Judge, Balotra, in Criminal
Revision No.37/2002.

...

Date of Order: October 18, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. Shailendra Kala, for the petitioner.
Mr. Rakesh Arora, for the non-petitioners.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 23-6-2003 passed by the Sessions Judge, Balotra (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 37/2002, whereby the revision petition filed by the non-petitioners against the order dated 29-10-2002 passed by the Additional Chief Judicial Magistrate, Balotra (for short, "the trial Court" hereinafter) was allowed, the order dated 29-10-2002 passed by the trial Court was set aside and the monthly allowance of maintenance @

Rs.1000/- to non-petitioner No.1 and @ Rs.500/- each to the non-petitioners No. 2 and 3, was granted.

I have heard learned counsel for the parties. Carefully gone through the orders passed by the trial Court as well as the Revisional Court.

The trial Court declined to grant maintenance in favour of the non-petitioners No.1, the wife of the petitioner and non-petitioners No. 2 and 3, the sons of the petitioner. From the careful perusal of the order of the trial Court, it is clear that the conclusion arrived at by the trial Court is based on conjecture and surmises and the same is contrary to the evidence produced before the trial Court. The trial Court has mainly based its finding on the ground that on one occasion, both the parties were called for conciliation but the non-petitioner No.1 did not appear and, therefore, assumed that she is not willing to live with the present petitioner. The trial Court has not assigned any reason for declining to grant monthly allowance of maintenance to the non-petitioners No.2 and 3, who are indisputably the minor sons of the petitioner. On a revision, the Revisional Court, on consideration of evidence on record, by a well-reasoned order, allowed the revision petition filed by the non-petitioners and by setting aside the order of the trial Court, allowed monthly allowance of maintenance to the non-petitioners. In my view, the Revisional Court was justified in setting aside the order of

the trial Court and granting monthly allowance of maintenance to the non-petitioners.

The non-petitioner No.1 specifically came with the allegation that she along with her two minor sons, was turned out from the matrimonial home by the petitioner after having subjected her to cruelty and harassment and also having given beating by the petitioner and she is residing with her widow month. Her mother, being a widow, herself has no source of income and unable to maintain even herself. Be that as it may, from the evidence, it is established that the petitioner, despite having sufficient means being an employee of Public Health & Engineering Department of the State Government on the post of Class IV employee, failed to maintain and neglected the non-petitioners. The conclusion arrived at by the Revisional Court is based on sound and proper appreciation of the evidence produced by the parties. In the circumstances, therefore, no case for interference in the impugned order in the inherent jurisdiction is made out.

At this stage, learned counsel for the petitioner submits that the petitioner is unable to pay the arrears of maintenance in a lump-sum and, therefore, the arrears of maintenance may be allowed to be paid in the monthly instalments. In the facts and circumstances, it is directed that the arrears of maintenance shall be paid by the petitioners to the

non-petitioners in twenty equal monthly instalments commencing from 01-10-2006 and shall be continued to pay the monthly allowance of maintenance as well as the instalments of arrears by 15th day of each succeeding month.

With these observations, the criminal miscellaneous petition is dismissed. The stay petition also stands dismissed.

(H.R. PANWAR), J.

mcs